

# EXHIBIT Q

BINGHAM McCUTCHEN LLP  
 CHRISTOPHER B. HOCKETT (SBN 121539)  
 GEOFFREY M. HOWARD (SBN 157468)  
 ZACHARY J. ALINDER (SBN 209009)  
 BREE HANN (SBN 215695)  
 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
 Telephone: (415) 393-2000  
 Facsimile: (415) 393-2286  
 chris.hockett@bingham.com  
 geoff.howard@bingham.com  
 zachary.alinder@bingham.com  
 bree.hann@bingham.com

DORIAN DALEY (SBN 129049)  
 JEFFREY S. ROSS (SBN 138172)  
 500 Oracle Parkway  
 M/S 5op7  
 Redwood City, CA 94070  
 Telephone: (650) 506-4846  
 Facsimile: (650) 506-7114  
 dorian.daley@oracle.com  
 jeff.ross@oracle.com

Attorneys for Plaintiffs  
 Oracle Corporation, Oracle USA, Inc.,  
 and Oracle International Corporation

## UNITED STATES DISTRICT COURT

Case 3:07-cv-01658-EMC Document 1-1 Filed 03/22/2007 Page 1 of 44

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EMC

C 07 1658

ORACLE CORPORATION, a Delaware  
 corporation, ORACLE USA, INC., a Colorado  
 corporation, and ORACLE INTERNATIONAL  
 CORPORATION, a California corporation,

Plaintiffs,

v.

SAP AG, a German corporation, SAP  
 AMERICA, INC., a Delaware corporation,  
 TOMORROWNOW, INC., a Texas corporation,  
 and DOES 1-50, inclusive,

Defendants.

CASE NO.

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:

(1) VIOLATIONS OF THE COMPUTER  
 FRAUD AND ABUSE ACT;  
 (2) VIOLATIONS OF THE COMPUTER  
 DATA ACCESS AND FRAUD ACT;  
 (3) INTENTIONAL INTERFERENCE  
 WITH PROSPECTIVE ECONOMIC  
 ADVANTAGE;  
 (4) NEGLIGENT INTERFERENCE WITH  
 PROSPECTIVE ECONOMIC  
 ADVANTAGE;

COMPLAINT

1 substantial probability that Oracle support customers would have initiated, renewed, or expanded  
2 support contracts and software licenses with Oracle rather than Defendants.

3           102. On information and belief, Defendants were aware of these economic  
4 relationships and intended to interfere with and disrupt them by unlawfully and wrongfully  
5 taking and using Oracle's Software and Support Materials to obtain and retain Oracle's own  
6 customers at little to no cost. These acts were undertaken by Defendants to obtain for  
7 themselves the software support contract revenue at Oracle's expense, and without the cost of  
8 competing fairly by independently developing the same support materials, and ultimately to  
9 migrate such customers away from Oracle's software programs and onto their own.

10           103. Defendants' conduct was wrongful by a measure beyond the fact of the  
11 interference itself. Defendants gained unauthorized access to Oracle's password-protected  
12 Customer Connection support website through false or improper credentials, copied Oracle's  
13 intellectual and contractual property, and used that property to obtain and retain Oracle's current  
14 and prospective clients.

15           104. This conduct, as alleged above, constitutes violations of numerous state  
16 and federal statutes and codes, including, but not limited to, violation of the Federal Computer  
17 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §  
18 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,  
19 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access  
20 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-  
21 11. Defendants' conduct also constitutes trespass to chattels, conversion, unjust enrichment, and  
22 conspiracy.

23           105. As a result of Defendants' acts, the above-described relationships have  
24 been actually disrupted, causing certain current and prospective support clients to contract with  
25 Defendants instead of Oracle for their software support and maintenance and, in some cases, for  
26 their enterprise software.

27           106. As a direct and proximate result of Defendants' actions, Oracle has  
28 suffered economic harm, including, but not limited to, loss of profits from sales or licenses to

1 current and potential customers of Oracle support services and software programs. Defendants'  
2 wrongful conduct was a substantial factor in causing this harm.

3 107. Unless Defendants are restrained by appropriate injunctive relief, their  
4 actions are likely to recur and will cause Oracle irreparable injury for which there is no adequate  
5 remedy at law.

6 108. Defendants' interference with Oracle's prospective economic advantage  
7 with its current and future customers, as described above, was willful, malicious, oppressive, and  
8 in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of punitive  
9 damages to punish their wrongful conduct and deter future wrongful conduct.

#### 10 **Fourth Claim for Relief**

##### 11 **Negligent Interference With Prospective Economic Advantage**

12 (By Oracle Against All Defendants)

13 109. Oracle incorporates by reference each of the allegations in the preceding  
14 paragraphs of this Complaint as though fully set forth here.

15 110. Oracle has an expectancy in continuing and advantageous economic  
16 relationships with current and prospective purchasers and licensees of Oracle's support services  
17 and software.

18 111. These relationships contain the probability of future economic benefit in  
19 the form of profitable support service contracts and software licenses. Had Defendants refrained  
20 from engaging in the unlawful and wrongful conduct described in this complaint, there is a  
21 substantial probability that Oracle support customers would have initiated, renewed, or expanded  
22 support contracts and software licenses with Oracle rather than Defendants.

23 112. Defendants knew or should have known about the economic relationship,  
24 described above, and knew or should have known that these relationships would be interfered  
25 with and disrupted if Defendants failed to act with reasonable care in their use of Oracle's  
26 Software and Support Materials. Defendants failed to act with reasonable care. Instead, they  
27 used Oracle's Software and Support Materials to obtain and retain for themselves software  
28

1 support contract revenue at Oracle's expense and without the cost of competing fairly by  
2 independently developing the same support materials.

3 113. Defendants' conduct was wrongful by a measure beyond the fact of the  
4 interference itself. Defendants gained unauthorized access to Oracle's password-protected  
5 Customer Connection support website through false or improper credentials, copied Oracle's  
6 intellectual and contractual property, and used that property to obtain and retain Oracle's current  
7 and prospective clients.

8 114. This conduct, as alleged above, constitutes violations of numerous state  
9 and federal statutes and codes, including, but not limited to, violation of the Federal Computer  
10 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §  
11 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,  
12 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access  
13 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-  
14 11. Defendants' conduct also constitutes trespass to chattels, conversion, unjust enrichment, and  
15 conspiracy.

16 115. As a result of Defendants' acts, the above-described relationships have  
17 been actually disrupted, causing certain current and prospective support clients to contract with  
18 Defendants instead of Oracle for their software support and maintenance and, in some cases, for  
19 their enterprise software.

20 116. As a direct and proximate result of Defendants' actions, Oracle has  
21 suffered economic harm, including, but not limited to, loss of profits from sales to current and  
22 potential customers of Oracle support, maintenance, and software products. Defendants'  
23 wrongful conduct was a substantial factor in causing this harm.

24 117. Unless Defendants are restrained by appropriate injunctive relief, their  
25 actions are likely to recur and will cause Oracle irreparable injury for which there is no adequate  
26 remedy at law.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle Corporation, Oracle International Corporation and Oracle USA, Inc. demand a trial by jury on all issues triable by a jury.

DATED: March 22, 2007

BINGHAM McCUTCHEN LLP

By: \_\_\_\_\_



Christopher B. Hockett  
Attorneys for Plaintiffs  
Oracle Corporation, Oracle USA, Inc., and  
Oracle International Corporation



BINGHAM McCUTCHEN LLP  
CHRISTOPHER B. HOCKETT (SBN 121539)  
GEOFFREY M. HOWARD (SBN 157468)  
HOLLY A. HOUSE (SBN 136045)  
ZACHARY J. ALINDER (SBN 209009)  
BREE HANN (SBN 215695)  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
Telephone: (415) 393-2000  
Facsimile: (415) 393-2286  
chris.hockett@bingham.com  
geoff.howard@bingham.com  
holly.house@bingham.com  
zachary.alinder@bingham.com  
bree.hann@bingham.com

DORIAN DALEY (SBN 129049)  
JEFFREY S. ROSS (SBN 138172)  
500 Oracle Parkway  
M/S 5op7  
Redwood City, CA 94070  
Telephone: (650) 506-4846  
Facsimile: (650) 506-7114  
dorian.daley@oracle.com  
jeff.ross@oracle.com

Attorneys for Plaintiffs  
Oracle Corporation, Oracle USA, Inc.,  
and Oracle International Corporation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a Delaware  
corporation, ORACLE USA, INC., a Colorado  
corporation, and ORACLE INTERNATIONAL  
CORPORATION, a California corporation,

Plaintiffs,

v.

SAP AG, a German corporation, SAP  
AMERICA, INC., a Delaware corporation,  
TOMORROWNOW, INC., a Texas corporation,  
and DOES 1-50, inclusive,

Defendants.

CASE NO. 07-CV-01658 (MJJ)

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF  
FOR:

(1) COPYRIGHT INFRINGEMENT;  
(2) VIOLATIONS OF THE COMPUTER  
FRAUD AND ABUSE ACT;  
(3) VIOLATIONS OF THE COMPUTER  
DATA ACCESS AND FRAUD ACT;  
(4) BREACH OF CONTRACT;  
(5) INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE;

Case No. 07-CV-01658 (MJJ)

FIRST AMENDED COMPLAINT

1 corrected. SAP TN's version also substitutes an SAP TN logo in place of the original Oracle  
2 logo and copyright notice.

3 88. Oracle has registered the downloaded version of its DST Solution that  
4 SAP TN copied and created derivative works from, and later distributed and publicly displayed,  
5 as well as a later version that SAP TN also downloaded shortly before Oracle filed its original  
6 Complaint, Registration Nos. TX 6-541-019 and TX 6-541-018. No customer is licensed to  
7 create derivative works from, distribute or publicly display Oracle's Software and Support  
8 Materials, and neither is SAP.

9 **H. SAP Adds The Ill-Gotten Gains To Its Cooffers**

10 89. SAP TN now claims to have delivered thousands of fixes and more than  
11 1000 tax and regulatory updates to Oracle's former customers. Not coincidentally, SAP TN has  
12 illegally downloaded thousands of fixes and updates from Oracle's restricted customer support  
13 website. SAP AG and SAP America directed this download scheme, ratified it, never disavowed  
14 it, and financially benefited from it. SAP subsequently has used Oracle's stolen intellectual  
15 property to provide maintenance services and unfairly compete against Oracle, has illegally won  
16 business and a number of customers from Oracle, and has artificially inflated its market share.

17 **I. The SAP Defendants Conspired With And Aided And Abetted Each Other**

18 90. Defendants willfully, intentionally, and knowingly agreed and conspired  
19 with each other to engage in the alleged wrongful conduct, including Defendants' interference  
20 with Oracle's business relationships and other unfair business practices, as well as Defendants'  
21 trespass on, and computer fraud concerning the Software and Support Materials.

22 91. Defendants did the acts alleged pursuant to, and in furtherance of, that  
23 agreement and/or furthered the conspiracy by cooperating, encouraging, ratifying, or adopting  
24 the acts of the others.

25 92. As a direct and proximate result of the acts in furtherance of the  
26 conspiracy, Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss  
27 of profits from sales to current and potential customers of Oracle support services and licenses  
28



1 for Oracle's software programs. The wrongful conduct committed pursuant to the conspiracy  
2 was a substantial factor in causing this harm.

3 93. Defendants also had full knowledge of or should have reasonably known  
4 of the true nature of the wrongful conduct of each other Defendant, and aided and abetted such  
5 wrongful conduct, including interference with Oracle's business relationships and other unfair  
6 business practices, as well as Defendants' trespass on, and computer fraud concerning the  
7 copyrighted Software and Support Materials, by providing substantial assistance and/or  
8 encouraging the others to act.

9 94. Defendants also aided and abetted the described wrongful conduct of the  
10 other Defendants by giving substantial assistance and/or encouragement that, separately  
11 considered, was wrongful in and of itself.

12 95. As a direct and proximate result of the aiding and abetting of these acts,  
13 Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits  
14 from sales to current and potential customers of Oracle support services and licenses to Oracle  
15 software programs. The wrongful conduct aided and abetted by the Defendants was a substantial  
16 factor in causing this harm.

17 96. Defendants' intentional agreement to commit, and commission of, these  
18 wrongful acts, and aiding and abetting of these wrongful acts, was willful, malicious, oppressive,  
19 and in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of  
20 punitive damages to punish their wrongful conduct and deter future wrongful conduct.

21 **First Claim for Relief**

22 **Copyright Infringement**

23 (By Oracle Against All Defendants)

24 97. Oracle incorporates by reference each of the allegations in the preceding  
25 paragraphs of this Complaint as though fully set forth here.

26 98. Oracle owns a valid and enforceable copyright in all of its Software and  
27 Support Materials, which are creative works of original authorship by Oracle.

28

1 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §  
2 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,  
3 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access  
4 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-  
5 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust  
6 enrichment.

7 136. As a result of Defendants' acts, the above-described relationships have  
8 been actually disrupted, causing certain current and prospective support clients to contract with  
9 Defendants instead of Oracle for their software support and maintenance and, in some cases, for  
10 their enterprise software.

11 137. As a direct and proximate result of Defendants' actions, Oracle has  
12 suffered economic harm, including, but not limited to, loss of profits from sales or licenses to  
13 current and potential customers of Oracle support services and enterprise software programs.  
14 Defendants' wrongful conduct was a substantial factor in causing this harm.

15 138. Unless Defendants are restrained by appropriate injunctive relief, their  
16 actions are likely to recur and will cause Oracle irreparable injury for which there is no adequate  
17 remedy at law.

18 139. Defendants' interference with Oracle's prospective economic advantage  
19 with its current and future customers, as described above, was willful, malicious, oppressive, and  
20 in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of punitive  
21 damages to punish their wrongful conduct and deter future wrongful conduct.

22 **Sixth Claim for Relief**

23 **Negligent Interference With Prospective Economic Advantage**

24 (By Oracle Against All Defendants)

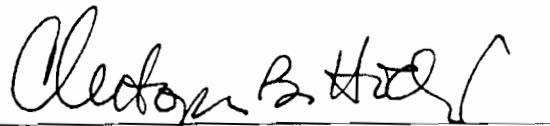
25 140. Oracle incorporates by reference the allegations of paragraphs 1 through  
26 81, 89 through 96, and 108 through 139 of this Complaint as though fully set forth here.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle Corporation, Oracle International Corporation and Oracle USA, Inc. demand a trial by jury on all issues triable by a jury.

DATED: June 1, 2007

BINGHAM McCUTCHEN LLP

By: 

Christopher B. Hockett  
Attorneys for Plaintiffs  
Oracle Corporation, Oracle USA, Inc., and  
Oracle International Corporation

BINGHAM McCUTCHEN LLP  
DONN P. PICKETT (SBN 72257)  
GEOFFREY M. HOWARD (SBN 157468)  
HOLLY A. HOUSE (SBN 136045)  
ZACHARY J. ALINDER (SBN 209009)  
BREE HANN (SBN 215695)  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
Telephone: (415) 393-2000  
Facsimile: (415) 393-2286  
donn.pickett@bingham.com  
geoff.howard@bingham.com  
holly.house@bingham.com  
zachary.alinder@bingham.com  
bree.hann@bingham.com

DORIAN DALEY (SBN 129049)  
JENNIFER GLOSS (SBN 154227)  
500 Oracle Parkway  
M/S 5op7  
Redwood City, CA 94070  
Telephone: (650) 506-4846  
Facsimile: (650) 506-7114  
dorian.daley@oracle.com  
jennifer.gloss@oracle.com

Attorneys for Plaintiffs  
Oracle Corporation, Oracle USA, Inc.,  
and Oracle International Corporation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a Delaware  
corporation, ORACLE USA, INC., a Colorado  
corporation, and ORACLE INTERNATIONAL  
CORPORATION, a California corporation,

Plaintiffs,

v.

SAP AG, a German corporation, SAP  
AMERICA, INC., a Delaware corporation,  
TOMORROWNOW, INC., a Texas corporation,  
and DOES 1-50, inclusive,

Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

SECOND AMENDED COMPLAINT  
FOR DAMAGES AND INJUNCTIVE  
RELIEF FOR:

(1) COPYRIGHT INFRINGEMENT;  
(2) VIOLATIONS OF THE COMPUTER  
FRAUD AND ABUSE ACT;  
(3) VIOLATIONS OF THE COMPUTER  
DATA ACCESS AND FRAUD ACT;  
(4) BREACH OF CONTRACT;  
(5) INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE;  
(6) NEGLIGENT INTERFERENCE  
WITH PROSPECTIVE ECONOMIC

1 from “\$600k per year down to \$30k if you tell me you need this” and if  
2 McDermott could address Home Depot’s concerns about the legality of SAP  
3 TN’s services. The price was worth it – the deal would give SAP a  
4 “marketing deliverable” to use with other customers.

- 5 • Direct Energy, October 2006 – “Randy Wheeler, SAP [Account Executive],  
6 contacted [SAP TN] mid-August with a prospect running PeopleSoft. . . . Now  
7 that we have displaced Oracle, we have effectively created future sales  
8 pipeline for SAP.”

9 137. As these examples illustrate, SAP used Oracle’s stolen intellectual  
10 property to provide maintenance services and unfairly compete against Oracle, thereby illegally  
11 winning business and a number of customers from Oracle, and artificially inflating its market  
12 share.

13 **I. Defendants Conspired With And Aided And Abetted Each Other**

14 138. Defendants willfully, intentionally, and knowingly agreed and conspired  
15 with each other to engage in the alleged wrongful conduct, including Defendants’ copyright  
16 infringement, interference with Oracle’s business relationships and other unfair business  
17 practices, as well as Defendants’ trespass on, and computer fraud concerning the Software and  
18 Support Materials.

19 139. Defendants did the acts alleged pursuant to, and in furtherance of, that  
20 agreement and/or furthered the conspiracy by cooperating, encouraging, ratifying, or adopting  
21 the acts of the others.

22 140. As a direct and proximate result of the acts in furtherance of the  
23 conspiracy, Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss  
24 of profits from sales to current and potential customers of Oracle support services and licenses  
25 for Oracle’s software programs. The wrongful conduct committed pursuant to the conspiracy  
26 was a substantial factor in causing this harm.

27 141. Defendants also had full knowledge of or should have reasonably known  
28 of the true nature of the wrongful conduct of each other Defendant, and aided and abetted such



1 wrongful conduct, including copyright infringement, interference with Oracle's business  
2 relationships and other unfair business practices, as well as Defendants' trespass on, and  
3 computer fraud concerning the copyrighted Software and Support Materials, by providing  
4 substantial assistance and/or encouraging the others to act.

5           142. SAP AG and SAP America condoned and encouraged SAP TN's  
6 activities, including through the Safe Passage program and Project Blue. Indeed, despite Project  
7 Blue, SAP AG monitored the Safe Passage program closely, "tracking these leads" from  
8 Germany, and pushing SAP TN "to see progress." SAP AG and SAP America account  
9 executives repeatedly fed leads to SAP TN sales personnel and worked closely with them  
10 throughout the sales and negotiations process, presenting joint service offerings to prospective  
11 customers with the goal of creating applications revenue for SAP. A year after the acquisition of  
12 SAP TN, to facilitate the joint sales and marketing process further, SAP AG specifically  
13 encouraged – and required – closer cooperation between the sales and marketing teams at SAP  
14 AG, SAP America and SAP TN. Thus, SAP AG and SAP America knew about, permitted,  
15 encouraged, directed and profited from SAP TN's wrongful use of these materials.

16           143. Defendants also aided and abetted the described wrongful conduct of the  
17 other Defendants by giving substantial assistance and/or encouragement that, separately  
18 considered, was wrongful in and of itself.

19           144. As a direct and proximate result of the aiding and abetting of these acts,  
20 Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits  
21 from sales to current and potential customers of Oracle support services and licenses to Oracle  
22 software programs. The wrongful conduct aided and abetted by the Defendants was a substantial  
23 factor in causing this harm.

24           145. Defendants' intentional agreement to commit, and commission of, these  
25 wrongful acts, and aiding and abetting of these wrongful acts, was willful, malicious, oppressive,  
26 and in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of  
27 punitive damages to punish their wrongful conduct and deter future wrongful conduct.

28



DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle Corporation, Oracle International Corporation and Oracle USA, Inc. demand a trial by jury on all issues triable by a jury.

DATED: July 28, 2008

BINGHAM McCUTCHEN LLP

By: 

Geoffrey M. Howard

Attorneys for Plaintiffs  
Oracle Corporation, Oracle International  
Corporation, and Oracle USA, Inc.

1 BINGHAM McCUTCHEN LLP  
DONN P. PICKETT (SBN 72257)  
2 GEOFFREY M. HOWARD (SBN 157468)  
HOLLY A. HOUSE (SBN 136045)  
3 ZACHARY J. ALINDER (SBN 209009)  
BREE HANN (SBN 215695)  
4 Three Embarcadero Center  
San Francisco, CA 94111-4067  
5 Telephone: (415) 393-2000  
Facsimile: (415) 393-2286  
6 donn.pickett@bingham.com  
geoff.howard@bingham.com  
7 holly.house@bingham.com  
zachary.alinder@bingham.com  
8 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)  
JENNIFER GLOSS (SBN 154227)  
10 500 Oracle Parkway  
M/S 5op7  
11 Redwood City, CA 94070  
Telephone: (650) 506-4846  
12 Facsimile: (650) 506-7114  
dorian.daley@oracle.com  
13 jennifer.gloss@oracle.com

14 Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International Corp., Oracle  
15 Systems Corp., Oracle EMEA Ltd., and J.D. Edwards  
Europe Ltd.  
16

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 ORACLE USA, INC., a Colorado corporation,  
21 ORACLE INTERNATIONAL CORPORATION,  
a California corporation, ORACLE SYSTEMS  
22 CORPORATION, a Delaware corporation,  
ORACLE EMEA LIMITED, an Irish private  
23 limited company, and J.D. EDWARDS EUROPE  
LIMITED, an Irish private limited company,

24 Plaintiffs,

25 v.

26 SAP AG, a German corporation, SAP  
AMERICA, INC., a Delaware corporation,  
27 TOMORROWNOW, INC., a Texas corporation,  
and DOES 1-50, inclusive,  
28

CASE NO. 07-CV-01658 PJH (EDL)

THIRD AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF FOR:

(1) COPYRIGHT INFRINGEMENT;  
(2) VIOLATIONS OF THE COMPUTER  
FRAUD AND ABUSE ACT;  
(3) VIOLATIONS OF THE COMPUTER  
DATA ACCESS AND FRAUD ACT;  
(4) BREACH OF CONTRACT;  
(5) INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE;  
(6) NEGLIGENT INTERFERENCE

1           138. As these examples illustrate, SAP used Oracle's stolen intellectual  
2 property to provide maintenance services and unfairly compete against Oracle, thereby illegally  
3 winning business and a number of customers from Oracle, and artificially inflating its market  
4 share.

5           **I. Defendants Conspired With And Aided And Abetted Each Other**

6           139. Defendants willfully, intentionally, and knowingly agreed and conspired  
7 with each other to engage in the alleged wrongful conduct, including Defendants' copyright  
8 infringement, interference with Oracle's business relationships and other unfair business  
9 practices, as well as Defendants' trespass on, and computer fraud concerning the Software and  
10 Support Materials.

11           140. Defendants did the acts alleged pursuant to, and in furtherance of, that  
12 agreement and/or furthered the conspiracy by cooperating, encouraging, ratifying, or adopting  
13 the acts of the others.

14           141. As a direct and proximate result of the acts in furtherance of the  
15 conspiracy, Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss  
16 of profits from sales to current and potential customers of Oracle support services and licenses  
17 for Oracle's software programs. The wrongful conduct committed pursuant to the conspiracy  
18 was a substantial factor in causing this harm.

19           142. Defendants also had full knowledge of or should have reasonably known  
20 of the true nature of the wrongful conduct of each other Defendant, and aided and abetted such  
21 wrongful conduct, including copyright infringement, interference with Oracle's business  
22 relationships and other unfair business practices, as well as Defendants' trespass on, and  
23 computer fraud concerning the copyrighted Software and Support Materials, by providing  
24 substantial assistance and/or encouraging the others to act.

25           143. SAP AG and SAP America condoned and encouraged SAP TN's  
26 activities, including through the Safe Passage program and Project Blue. Indeed, despite Project  
27 Blue, SAP AG monitored the Safe Passage program closely, "tracking these leads" from  
28 Germany, and pushing SAP TN "to see progress." SAP AG and SAP America account

1 executives repeatedly fed leads to SAP TN sales personnel and worked closely with them  
2 throughout the sales and negotiations process, presenting joint service offerings to prospective  
3 customers with the goal of creating applications revenue for SAP. A year after the acquisition of  
4 SAP TN, to facilitate the joint sales and marketing process further, SAP AG specifically  
5 encouraged – and required – closer cooperation between the sales and marketing teams at SAP  
6 AG, SAP America and SAP TN. Thus, SAP AG and SAP America knew about, permitted,  
7 encouraged, directed and profited from SAP TN's wrongful use of these materials.

8 144. Defendants also aided and abetted the described wrongful conduct of the  
9 other Defendants by giving substantial assistance and/or encouragement that, separately  
10 considered, was wrongful in and of itself.

11 145. As a direct and proximate result of the aiding and abetting of these acts,  
12 Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits  
13 from sales to current and potential customers of Oracle support services and licenses to Oracle  
14 software programs. The wrongful conduct aided and abetted by the Defendants was a substantial  
15 factor in causing this harm.

16 146. Defendants' intentional agreement to commit, and commission of, these  
17 wrongful acts, and aiding and abetting of these wrongful acts, was willful, malicious, oppressive,  
18 and in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of  
19 punitive damages to punish their wrongful conduct and deter future wrongful conduct.

20 **First Claim for Relief**

21 **Copyright Infringement**

22 (By OIC, OSC and JDEE Against All Defendants)

23 147. OIC, OSC and JDEE incorporate by reference each of the allegations in  
24 the preceding paragraphs of this Complaint as though fully set forth here.

25 148. OIC owns a valid and enforceable copyright in all of its software  
26 applications and Software and Support Materials, which are creative works of original  
27 authorship. OIC has pre-existing, or has obtained from the Register of Copyrights, Certificates of  
28 Registration that cover many of the software applications and Software and Support Materials

1 agreements governing access to, and use of, Customer Connection and the Software and Support  
2 Materials available through Customer Connection, and wrongfully used the property that they  
3 found there to advertise their services, and otherwise obtain and retain the current and  
4 prospective clients of Oracle USA, OIC and OEMEA. Simultaneously, Defendants manipulated  
5 those customers to obtain copies of Oracle software releases, which were then copied to  
6 Defendants' own computer systems and used to lure away current and prospective clients of  
7 Oracle USA, OIC and OEMEA.

8           190. This conduct, as alleged above, constitutes violations of numerous state  
9 and federal statutes and codes, including, but not limited to, violation of the Federal Computer  
10 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §  
11 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,  
12 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access  
13 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-  
14 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust  
15 enrichment.

16           191. As a result of Defendants' acts, the above-described relationships have  
17 been actually disrupted, causing certain current and prospective support clients to contract with  
18 Defendants instead of with Oracle USA, OIC and OEMEA for those clients' software support  
19 and maintenance and, in some cases, for their enterprise software.

20           192. As a direct and proximate result of Defendants' actions, Oracle USA, OIC  
21 and OEMEA have suffered economic harm, including, but not limited to, loss of profits from  
22 sales or licenses to current and potential customers of support services and enterprise software  
23 programs. Defendants' wrongful conduct was a substantial factor in causing this harm.

24           193. Unless Defendants are restrained by appropriate injunctive relief, their  
25 actions are likely to recur and will cause Oracle USA, OIC and OEMEA irreparable injury for  
26 which there is no adequate remedy at law.

27           194. Defendants' interference with Oracle USA's, OIC's and OEMEA's  
28 prospective economic advantage with its current and future customers, as described above, was

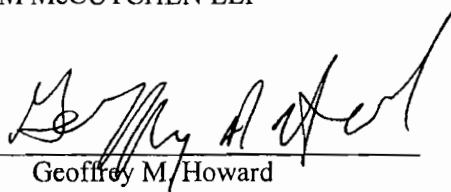
DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle USA, Inc., Oracle International Corp., Oracle Systems Corp., Oracle EMEA Ltd., and J.D. Edwards Europe Ltd. demand a trial by jury on all issues triable by a jury.

DATED: October 8, 2008

BINGHAM McCUTCHEN LLP

By:

  
Geoffrey M. Howard

Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International  
Corp., Oracle Systems Corp., Oracle EMEA  
Ltd., and J.D. Edwards Europe Ltd.



1 BINGHAM McCUTCHEN LLP  
 2 DONN P. PICKETT (SBN 72257)  
 3 GEOFFREY M. HOWARD (SBN 157468)  
 4 HOLLY A. HOUSE (SBN 136045)  
 5 ZACHARY J. ALINDER (SBN 209009)  
 6 BREE HANN (SBN 215695)  
 7 Three Embarcadero Center  
 8 San Francisco, CA 94111-4067  
 9 Telephone: (415) 393-2000  
 10 Facsimile: (415) 393-2286  
 11 donn.pickett@bingham.com  
 12 geoff.howard@bingham.com  
 13 holly.house@bingham.com  
 14 zachary.alinder@bingham.com  
 15 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)  
 10 JENNIFER GLOSS (SBN 154227)  
 11 500 Oracle Parkway  
 12 M/S 5op7  
 13 Redwood City, CA 94070  
 14 Telephone: (650) 506-4846  
 15 Facsimile: (650) 506-7114  
 16 dorian.daley@oracle.com  
 17 jennifer.gloss@oracle.com

14 Attorneys for Plaintiffs  
 15 Oracle USA, Inc., Oracle International Corp., Oracle  
 16 EMEA Ltd., and Siebel Systems, Inc.

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN FRANCISCO DIVISION

20 ORACLE USA, INC., a Colorado corporation,  
 21 ORACLE INTERNATIONAL CORPORATION,  
 22 a California corporation, ORACLE EMEA  
 23 LIMITED, an Irish private limited company, and  
 24 SIEBEL SYSTEMS INC., a Delaware  
 25 corporation,

23 Plaintiffs,

24 v.

25 SAP AG, a German corporation, SAP  
 26 AMERICA, INC., a Delaware corporation,  
 27 TOMORROWNOW, INC., a Texas corporation,  
 28 and DOES 1-50, inclusive,

27 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**FOURTH AMENDED COMPLAINT  
 FOR DAMAGES AND INJUNCTIVE  
 RELIEF FOR:**

(1) COPYRIGHT INFRINGEMENT;  
 (2) VIOLATIONS OF THE  
 COMPUTER FRAUD AND ABUSE  
 ACT;  
 (3) VIOLATIONS OF THE  
 COMPUTER DATA ACCESS AND  
 FRAUD ACT;  
 (4) BREACH OF CONTRACT;  
 (5) INTENTIONAL INTERFERENCE  
 WITH PROSPECTIVE ECONOMIC  
 ADVANTAGE;

1 practices, as well as Defendants' trespass on, and computer fraud concerning the Software and  
2 Support Materials.

3 147. Defendants did the acts alleged pursuant to, and in furtherance of, that  
4 agreement and/or furthered the conspiracy by cooperating, encouraging, ratifying, or adopting  
5 the acts of the others.

6 148. As a direct and proximate result of the acts in furtherance of the  
7 conspiracy, Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss  
8 of profits from sales to current and potential customers of Oracle support services and licenses  
9 for Oracle's software programs. The wrongful conduct committed pursuant to the conspiracy  
10 was a substantial factor in causing this harm.

11 149. Defendants also had full knowledge of or should have reasonably known  
12 of the true nature of the wrongful conduct of each other Defendant, and aided and abetted such  
13 wrongful conduct, including copyright infringement, interference with Oracle's business  
14 relationships and other unfair business practices, as well as Defendants' trespass on, and  
15 computer fraud concerning the copyrighted Software and Support Materials, by providing  
16 substantial assistance and/or encouraging the others to act.

17 150. SAP AG and SAP America condoned and encouraged SAP TN's  
18 activities, including through the Safe Passage program and Project Blue. Indeed, despite Project  
19 Blue, SAP AG monitored the Safe Passage program closely, "tracking these leads" from  
20 Germany, and pushing SAP TN "to see progress." SAP AG and SAP America account  
21 executives repeatedly fed leads to SAP TN sales personnel and worked closely with them  
22 throughout the sales and negotiations process, presenting joint service offerings to prospective  
23 customers with the goal of creating applications revenue for SAP. A year after the acquisition of  
24 SAP TN, to facilitate the joint sales and marketing process further, SAP AG specifically  
25 encouraged – and required – closer cooperation between the sales and marketing teams at SAP  
26 AG, SAP America and SAP TN. Thus, SAP AG and SAP America knew about, permitted,  
27 encouraged, directed and profited from SAP TN's wrongful use of these materials.

28 151. Defendants also aided and abetted the described wrongful conduct of the

1 other Defendants by giving substantial assistance and/or encouragement that, separately  
2 considered, was wrongful in and of itself.

3 152. As a direct and proximate result of the aiding and abetting of these acts,  
4 Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits  
5 from sales to current and potential customers of Oracle support services and licenses to Oracle  
6 software programs. The wrongful conduct aided and abetted by the Defendants was a substantial  
7 factor in causing this harm.

8 153. Defendants' intentional agreement to commit, and commission of, these  
9 wrongful acts, and aiding and abetting of these wrongful acts, was willful, malicious, oppressive,  
10 and in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of  
11 punitive damages to punish their wrongful conduct and deter future wrongful conduct.

12 **First Claim for Relief**

13 **Copyright Infringement**

14 (By OIC Against All Defendants)

15 154. OIC incorporates by reference each of the allegations in the preceding  
16 paragraphs of this Complaint as though fully set forth here.

17 155. OIC owns a valid and enforceable copyright in all of its software  
18 applications and Software and Support Materials, which are creative works of original  
19 authorship. OIC has pre-existing, or has obtained from the Register of Copyrights, Certificates  
20 of Registration that cover many of the software applications and Software and Support Materials  
21 taken and copied by SAP TN.

22 156. OIC has also obtained, through transfer agreements, all rights, title, and  
23 interest in registered and unregistered copyrights formerly owned by certain PeopleSoft, J.D.  
24 Edwards, and Siebel entities.

25 157. OIC owned one or more exclusive rights in certain copyrights at issue in  
26 this case at a point in time during which Defendants infringed those exclusive rights.

27 158. Defendants have infringed copyrights in Oracle software applications and  
28 Software and Support Materials, including the software applications and Software and Support

1           195. This conduct, as alleged above, constitutes violations of numerous state  
2 and federal statutes and codes, including, but not limited to, violation of the Federal Computer  
3 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §  
4 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,  
5 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access  
6 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-  
7 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust  
8 enrichment.

9           196. As a result of Defendants' acts, the above-described relationships have  
10 been actually disrupted, causing certain current and prospective support clients to contract with  
11 Defendants instead of with Oracle USA, OIC and OEMEA for those clients' software support  
12 and maintenance and, in some cases, for their enterprise software.

13           197. As a direct and proximate result of Defendants' actions, Oracle USA, OIC  
14 and OEMEA have suffered economic harm, including, but not limited to, loss of profits from  
15 sales or licenses to current and potential customers of support services and enterprise software  
16 programs. Defendants' wrongful conduct was a substantial factor in causing this harm.

17           198. Unless Defendants are restrained by appropriate injunctive relief, their  
18 actions are likely to recur and will cause Oracle USA, OIC and OEMEA irreparable injury for  
19 which there is no adequate remedy at law.

20           199. Defendants' interference with Oracle USA's, OIC's and OEMEA's  
21 prospective economic advantage with its current and future customers, as described above, was  
22 willful, malicious, oppressive, and in conscious disregard of Oracle USA's, OIC's and  
23 OEMEA's rights, and Oracle USA, OIC and OEMEA are therefore entitled to an award of  
24 punitive damages to punish Defendants' wrongful conduct and deter future wrongful conduct.

25                           **Sixth Claim for Relief**

26                   **Negligent Interference With Prospective Economic Advantage**

27                   (By Oracle USA, OIC and OEMEA Against All Defendants)

28           200. Oracle USA, OIC and OEMEA incorporate by reference the allegations of



1 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §  
2 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,  
3 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access  
4 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-  
5 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust  
6 enrichment.

7 206. As a result of Defendants' acts, the above-described relationships have  
8 been actually disrupted, causing certain current and prospective support clients to contract with  
9 Defendants instead of Oracle USA, OIC and OEMEA for their software support and  
10 maintenance and, in some cases, for their enterprise software.

11 207. As a direct and proximate result of Defendants' actions, Oracle USA, OIC,  
12 and OEMEA have suffered economic harm, including, but not limited to, loss of profits from  
13 sales or licenses to current and potential customers of support services and enterprise software  
14 programs. Defendants' wrongful conduct was a substantial factor in causing this harm.

15 208. Unless Defendants are restrained by appropriate injunctive relief, their  
16 actions are likely to recur and will cause Oracle USA, OIC and OEMEA irreparable injury for  
17 which there is no adequate remedy at law.

18 **Seventh Claim for Relief**

19 **Unfair Competition - Cal. Bus. & Prof. Code § 17200**

20 (By Oracle USA, OIC, OEMEA, and SSI Against All Defendants)

21 209. Oracle USA, OIC, OEMEA, and SSI incorporate by reference the  
22 allegations of paragraphs 1 through 125, 134 through 153, and 169 through 208 of this  
23 Complaint as though fully set forth here.

24 210. Defendants have engaged in unlawful business acts or practices by  
25 committing acts including computer fraud, trespass, breach of contract, interference with  
26 business relationships, and other illegal acts and practices as alleged above, all in an effort to  
27 gain unfair competitive advantage over Oracle USA, OIC, SSI, and OEMEA.

28 211. These unlawful business acts or practices were committed pursuant to

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle USA, Inc., Oracle International Corp., Oracle EMEA Ltd., and Siebel Systems, Inc. demand a trial by jury on all issues triable by a jury.

DATED: August 18, 2009

BINGHAM McCUTCHEN LLP

By: 

Geoffrey M. Howard

Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International  
Corp., Oracle EMEA Ltd., and Siebel  
Systems, Inc.